

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of John Rosky

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

The above matter came on for a prehearing conference at the Office of Administrative Hearings in Minneapolis before Administrative Law Judge (ALJ) Richard C. Luis on December 13, 2005.

During the course of the prehearing conference, the Respondent, John Rosky, waived his right to an evidentiary hearing in the matter and went on the record after being sworn under oath to enter a Stipulation of Facts, which Stipulation is reflected in the Findings of Fact below.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). John Rosky, 2353 – 135<sup>th</sup> Avenue NW, Andover, MN 55304, appeared on his own behalf.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Labor & Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be

imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **STATEMENT OF ISSUES**

Whether disciplinary action should be taken against John Rosky for engaging in unlicensed residential building contractor activities and for violation of a Consent Order issued by the Department on May 2, 2005; and

Whether discipline of the Respondent is in the public interest?

Based on the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. At the scheduled prehearing conference on December 13, 2005, Respondent John Rosky appeared and waived his right to an evidentiary hearing in this case. The Administrative Law Judge placed him under oath and testimony was taken from Mr. Rosky.

2. Mr. Rosky stipulates that he was previously licensed as a residential building contractor and that a Consent Order was issued by the Commissioner of Commerce (the official formerly having jurisdiction over matters pertaining to builders and remodelers) on May 12, 2005, which Order revoked a license previously held by Mr. Rosky.

3. Mr. Rosky stipulates that a complaint was filed in this matter by the City of Blaine, Minnesota and that the Department's investigation of the Complaint revealed that the Respondent applied for a municipal contractor's license with the City of Blaine on May 18, 2005.

4. Mr. Rosky stipulated that he applied for and received a building permit for the City of Blaine to construct a three season porch in Blaine.

5. Mr. Rosky stipulated that he provided estimates to homeowners in Blaine for an addition to their home as well as for the installation of a window on September 11, 2005.

Based on the above Findings, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. § § 14.50, 45.027, subd. 6 & 7 and 326.91.

2. Any of the Findings more properly termed Conclusions are incorporated as such.

3. The Respondent was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.

4. The waiver by the Respondent of his right to an evidentiary hearing in this matter and his decision to proceed with testimony at the prehearing conference was given intelligently and with full knowledge of the implications of not going to an evidentiary hearing.

5. By engaging in unlicensed residential building contractor activities, Mr. Rosky violated Minn. Stat. § 326.84, subds. 1 and 1b.

6. By violating the May 12, 2005 Consent Order issued by the Commissioner of Commerce, Mr. Rosky violated Minn. Stat. § 326.91, subd. 1(5).

7. Disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that appropriate disciplinary action be taken against John Rosky.

Dated this 20<sup>th</sup> day of December, 2005.

s/Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Default

